Supreme Court, U.S.
FILED
APR 27 1992
OFFICE OF THE CLERK

No. 91-1556

In The

Supreme Court of the United States

October Term, 1991

COMMERCIAL BUILDERS OF NORTHERN CALIFORNIA, AND ITS AFFECTED MEMBERS,

Petitioner,

vs.

CITY OF SACRAMENTO, CALIFORNIA, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

CALIFORNIA BUSINESS PROPERTIES ASSOCIATION BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Jo Anne M. Bernhard
Law Offices of Jo Anne M. Bernhard
2621 "K" Street
Sacramento, California 95816
Phone: (916) 442-4908
Fax: (916) 442-1624

Attorney for Amicus Curiae California Business Properties Association

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES CITED ii

BRIEF AMICUS CURIAE OF CALIFORNIA BUSINESS PROPERTIES ASSOCIATION IN SUPPORT OF PETITIONER 1

INTEREST OF AMICUS 1

FACTS 2

ARGUMENT 3

I. The conflict created by the Court below should be resolved 3

II. The oppressive imposition and exaction of private property fees by government creates a loss of reasonable economic use of one's property without just compensation 4

CONCLUSION 5

TABLE OF AUTHORITIES CITED

Page

CASES

Nollan vs. California Coastal Commission, 483 U.S. 835 (1987) 3

UNITED STATES CONSTITUTION

Fifth Amendment 4

CALIFORNIA CONSTITUTION

Article 13(a) 5

No. 91-1556

In The

Supreme Court of the United States

October Term, 1991

COMMERCIAL BUILDERS OF NORTHERN CALIFORNIA, AND ITS AFFECTED MEMBERS,

Petitioner,

vs.

CITY OF SACRAMENTO, CALIFORNIA, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF CALIFORNIA BUSINESS PROPERTIES ASSOCIATION AS *AMICUS CURIAE*, IN SUPPORT OF THE PETITIONER

INTEREST OF THE *AMICUS CURIAE*

California Business Properties Association (CBPA) is a non-profit association composed of developers, builders, lenders, commercial property owners, real estate agents, major retailers and professional service corporations engaged in creating, constructing and operating shopping and industrial centers, commercial developments and redevelopment projects.

CBPA is the designated legislative advocate in the State of California for the International Council of Shopping Centers (ICSC), the California chapters of the National Association of Industrial and Office Parks (NAIOP), the Commercial Industrial Development Association (CIDA), the Associated Builders and Contractors (ABC), the Industrial League of Orange County (ILOC) and the San Diego Commercial Industrial Council (SDCIC).

These affiliations make CBPA the acknowledged voice of the commercial real estate industry in California, representing the state's largest commercial real estate consortium with almost 7,000 members whose projects are valued in the billions.

This case represents the imposition of a burdensome governmental regulation that severely diminishes, restrains and restricts its members' private property rights. The final outcome is extremely important to this *amicus curiae* and all of its member trade organizations who confront countless regulatory requirements affecting the use of their property across the State of California each day. Many of these requirements are unrelated and unreasonable.

FACTS

CBPA refers the Court to the Brief of the Petitioners for a statement of the facts of this case, and that statement is incorporated herein by reference.

ARGUMENT

POINT I

The conflict created by the Court below should be resolved.

The Court's decision below has caused the adoption of a standard contrary to the one approved by this Court in the *Nollan Case*.[1] Until the conflict is resolved, many real estate projects cannot be adequately planned; unforeseen, unexpected and unrelated fees can be imposed by any governmental body anytime it requires a solution to the "societal problem of the day". A developer or builder will never know what to expect or what cause its project is going to be required to support or resolve on a given day.

Resolution is especially important to those members who are restricted and restrained from otherwise developing their commercial property unless they agree to the imposition of numerous and enormous fees and exactions in the guise of costs that purport to substantially relate to and result from their proposed developments, when, in reality, there is little, if any causal connection.

As such, these unexpected fees will result in a substantial interference with any proposed development of an individual's real property unless the conflict in the standard for imposition is resolved.

---

[1] Nollan vs. California Coastal Commission, 483 U.S. 834 (1987)

POINT II

The oppressive imposition and exaction of private property fees by government creates a loss of reasonable economic use of one's property without just compensation.

Developers of commercial real property projects have created valuable assets for the community and will continue to do so if not impaired by oppressive governmental regulations. These assets provide jobs and income to a community that is already in place. If future development is required to cure existing social ills, such as lack of that community's affordable housing (as in this case), then eventually all such development will be assessed with a multitude of "societal solution" problems. These can range from additional police protection to more playgrounds, child care centers, medical facilities, aids research centers, immigration needs, and on and on. One oppressive regulation creates the catalyst and should be deemed to be the first taking that requires fair and just compensation.[2] If not, then how many more such regulations will be required to constitute such a taking.

If a proposed project is unable to be developed due to oppressive regulatory demands and requirements whether monetary or not, and if that practice is not deemed to be a "taking without just compensation", then eventually, as the land sits for months and years, the lack of income may cause the owner to be unable to pay the upkeep of the property, including the taxes. Then such

---

[2] United States Constitution, Fifth Amendment, which provides, in part: "[N]or shall private property be taken for public use, without just compensation"

property will eventually escheat to the government. A taking ultimately occurs, but, in this case, for no compensation.

The fact that the City of Sacramento has continued to suffer a loss in income due to the voter imposed change in California's property tax assessment structure over 15 years ago[3] and that it seeks to replace that loss with imposition after imposition should not excuse its responsibility of paying a fair and just compensation, when such imposition results in the economic loss of the property to its owner.

CONCLUSION

For these reasons, the petition for writ of certiorari raises substantial questions of federal law and this *amicus curiae* respectfully requests this Court to grant the petition for writ of certiorari.

Respectfully submitted,

Jo Anne M. Bernhard
Law Offices of Jo Anne M. Bernhard
2621 "K" Street
Sacramento, California 95816
(916) 442-4908

Counsel for Amicus Curiae

[3] California Constitution Article 13(a)